IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8725 OF 2004

Pundalik Vithal Parab, .. Petitioner

Vs

Smt. Rukmini Vithal Parab .. Respondent

Mr.Madhav Jamdar, for the petitioner.

Mr S.S.Redekar, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 22nd November, 2004.

PC:

1. Heard the learned counsel for the parties.

2. By the order, impugned in the instant petition, the learned Judge has rejected the application for setting aside "No.W.S." order holding that the Court cannot grant the time beyond a period of 90 days for filing of the written statement relying upon the judgment of this Court reported in Iridium India Telecom Ltd Vs. Motorola INC and Ors, 2004 (1) Mh.L.J.532 and in Prabhakar Madhukarrao Mule Vs. Bhagwan Mitharam Choudhary, 2004 (2) Mh.L.J.1058.

3. This Court considered the provisions of Order 8 Rule 1,9 and 10 of the CPC in **Shailaja A.Sawant Vs Sayajirao Banpatrao Patil, 2004 (2) Mh.L.J.419** and has taken a

view that the provisions of Order 8 Rule 1 are directory in nature and in a given case the Court has powers to extend time to file written statement. The judgment also records a note of caution in paragraph 31 thereof. One of the Single Judges of this Court had taken a different view and as a consequence thereof the question was referred to the Division Bench. The Division Bench in **Chintaman Sukhdeo Kaklij and Ors Vs. Shivaji Bhausaheb Gadhe and Ors in Writ Petition No.2847 of 2004** decided on 12/13th August,2004, upheld the view taken by the learned Single Judge in Shailaja Sawant's case. Keeping that in view, in my opinion, the appropriate course would be to direct the learned Judge to consider the Notice of Motion bearing No.1430 of 2004-(Exhibit-C) afresh in the light of the observations made in Shailaja Sawant's case after giving an opportunity of being heard to the parties in the proceedings. Order accordingly. In view of this, the impugned order dated 22.6.2004 renders ineffective. With these observations, the writ petition is disposed of.

. An authenticated copy of this order may be made available to the parties.

(D.B.BHOSALE, J.)